

# CORPORATE GOVERNANCE AND BUILDING GOOD BUSINESS PRACTICES

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Today, consensus is growing among industrial and transitional countries alike that economic success comes increasingly to companies, and countries that provide transparent and rule of law based commercial environment. This means good business ethics, good corporate governance and effective commercial dispute resolution, all institutions of rule of law that are attributes of today's most successful economies.

We live in an age of globalization and new technology that cuts across borders to create larger and more dynamic markets. Today's business environment is in constant flux. Corporate structures, customer demands, technologies, competition — all are constantly changing.

Businesses can no longer afford only to rely on personal relations. Instead, they must be able to call on institutions to provide assurances that potential partners and borrowers will employ proper business practices; that shareholders rights will be protected, creating the confidence necessary for corporations to raise capital; and that, when necessary, they can rely on effective commercial dispute resolution mechanisms.

Just as the problems are multi-faceted, so too are the solutions. A responsible approach should embody a recognition that governments and private sectors

devise cooperative strategies in sharing the burden of promoting good governance, transparency and rule of law.

American companies have highlighted the lack of transparency and fairness in the commercial environment, and noted the absence of trust in the current business climate in Russia. Undoubtedly, accountability, reliability, honesty and good reputation of business are essential prerequisites to trade and investment. Ethics in business and public service are in large measure a reflection of a national culture and the social fabric of a country as a whole. The Secretary of Commerce, Don Evans, has a particular interest in promoting this concept of trust and business ethics.

During his trip to Russia in July of 2001, Secretary Evans participated in a good governance roundtable event, attended by the Russian Deputy Minister of Economic Development and Trade, Elvira Nabiullina as well as members of the Duma, and Russian and American private sector participants. The objectives of this event were to engage the Russian government and the Russian and American private sectors in the Department's good governance program and build on the momentum of positive developments on good governance in Russia.

What role can an ethics code play in building a corporate reputation? A written code of business conduct has many tangible and practical benefits

for a company, an individual and society as a whole. For instance, written codes of conduct:

- Can build public trust and confidence in business and political institutions;
- Create a predictable environment that helps ensure that employees and their companies will behave ethically when confronted by improper requests or demands; and
- Set clear boundaries and definable standards that can be objectively measured by individuals, businesses and society.

A business ethics code should be one part of a company's overall ethics initiative and must be complemented by appropriate education, training, supportive infrastructure and implementation. A code alone is not enough.

During Secretary Evans' two visits to Russia in 2001, he placed a strong emphasis on good corporate governance and ethics as a key component to promoting good relations between Russia and the United States. "To build a relationship and environment of trust, good governance, the development of business codes of conduct and guidelines for resolving business disputes in a transparent manner are all essential components to the process. It is my strong belief that trust is the fundamental basis for our future success," said Secretary Evans during

an address to the American Chamber of Commerce in Russia during his July visit.

The U.S. Department of Commerce's Good Governance Program, in cooperation with foreign governments and the American and domestic private sectors, develops and implements joint projects and programs to enhance good governance and transparency in business environments in the regions of Eastern Europe, Russia and the Independent States.

#### **Improving Commercial Dispute Resolution Mechanisms:**

Weak and complex commercial dispute mechanisms have been a key concern for U.S. companies. In cooperation with national justice departments and local courts, the U.S. Department of Commerce works to promote fair resolution of commercial disputes and timely enforcements. In Russia, for example, the Department along with the Supreme Arbitration Court and International Commercial Arbitration Court and International Commercial Arbitration Court and Russian and American experts jointly developed and published (in English and Russian) a Handbook on Commercial Dispute Resolution in the Russian Federation. The aim of the Handbook is to help the business community make more effective use of existing Russian institutions and to consider areas for possible improvements.

#### **Improving Enforcement of Arbitral Awards and Court Judgments:**

In spite of local court recognition of arbitration awards and judgments, U.S. companies are often unable to enforce awards and court judgments in many countries. The problem of lack of transparency contributes to a lack of uniformity, predictability and consistency in the area of enforcement. The Department advocates for fair and timely enforcement of awards and judgments and seeks to develop projects to educate and help improve the enforcement mechanisms.

**Promoting Better Business Practices and Professional Ethics:** As part of a five phase program, the Department conducts preliminary consultations with private sector and foreign government participants and assists with the development of basic guidelines for codes of business conduct. The program also offers a series of ethics training workshops and an intensive "train-the-trainer" program in the U.S. for professionals intent on implementing their skills and knowledge upon their return home. As a follow-up, the Department is developing a business ethics manual and other training tools as well as sponsor conferences on business ethics to sustain the initiative and help build lasting institutions to promote good governance in public and private sectors.

#### **Strengthening Corporate Governance:**

The lack of fair and transparent corporate governance processes often leads to abuse and dilution of shareholder rights as well as preferential treatment of domestic stakeholders. Weak corporate governance practices also inhibit growth of foreign and domestic investment. In this area, the Department examines ways in which it can promote the importance of strong corporate governance. For example, in Russia, the Department is cooperating with the Federal Commission for the Securities Markets and the private sector on the development of a Corporate Governance Guidebook for Enterprises in Russia.

#### **Safeguarding Intellectual Property Rights:**

Lack of effective customs and judicial enforcement and inadequate legislative and regulatory regimes and deterrents contribute to high rates of copyright piracy and counterfeiting in many countries. Consequential monetary and market losses to American companies are immeasurably high. By working to establish a continual private sector to foreign government dialogue through consultative seminars and training workshops and development of training programs for enforcement

officials, the Department seeks to strengthen protection of intellectual property rights.

Working at a grass-roots level to develop a collectively accepted code of ethics and corporate governance will improve the overall atmosphere of business globally.

Good corporate governance and business ethics are not the sole responsibility of business enterprises. Government also has a role to play. To begin with, government can support these efforts by adopting these business and ethics codes for public officials, providing incentives to the private sector, and promoting education and training. Government can also promote civil society in which individuals play significant role in government processes. The business community and non-governmental organizations can and should work together with regional and federal government in public/private partnerships to adopt principles and effective practices to fight corruption and to promote transparency and good governance.

A growing number of American companies are enacting strict ethical guidelines and backing them up with internal mechanisms to enforce them. Companies such as Lockheed Martin, EDS and Boeing are requiring employees and senior management to take classes in ethics and mandatory meetings are held to discuss ethics issues and problems.

Without government leadership and support, the best efforts of the private sector will fall short. But without private sector participation and leadership, all these efforts would not be enough and is more than likely wasted. ■